IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION No 2361 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAIRMIBEN MANOJBHAI PATADIA

Versus

MANOJBHAI KISHORBHAI PATADIA

Appearance:

MR PRAVIN GONDALIYA for the Petitioner.

MR SHAKEEL A QURESHI for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/03/2004

ORAL JUDGEMENT

Rule. With the consent of the parties, the matter is taken up for final hearing today.

This is an application by the petitioner-wife under Section 24 of the Civil Procedure Code for

transferring Civil Miscellaneous (Guardian) Application No.55 of 2003 from the Court of Extra Assistant Judge, Surat, to the Court of Extra Assistant Judge, Rajkot.

The petitioner is the wife and the respondent is the husband. Unfortunately, because of the matrimonial dispute, they are residing separately and the wife is residing with the two children at Rajkot, while the husband is residing at Surat. The respondent-husband has filed the aforesaid application under the Guardians and Wards Act for having custody of the minor children. That application is pending before the Court of Extra Assistant Judge, Surat, at present. The petitioner-wife has also initiated proceedings under Section 125 of the Code of Criminal Procedure, which is pending before the Court of Chief Judicial Magistrate, First Class, Rajkot. The husband is required to go to Rajkot for attending the said proceedings in the Court at Rajkot.

By this application, it is prayed by the wife that, with two minor children, it is difficult for her to travel for reporting at the Surat Court. It is submitted that she is not earning in any manner and, being a lady, she finds it difficult to travel along with two minor children, upto Surat. It is argued by Mr.Gondaliya that the husband, in any case is required to attend the proceedings at Rajkot in connection with the maintenance application filed by the wife at the said place. He submitted that the husband can very well travel in his car upto Rajkot and, therefore it is prayed that the application, being Civil Miscellaneous (Guardian) Application No.55 of 2003, which is pending in the Court of Extra Assistant Judge, Surat, may be transferred to the Court of Extra Assistant Judge, Rajkot.

Mr.Qureshi, on the other hand, submitted that the petitioner has no objection if the proceedings are transferred to a place, nearby to Rajkot. He submitted that there is some apprehension on the part of the respondent-husband, as, he may be subjected to some assault, if he is required to to go Rajkot for attending the said case.

However, after hearing both the sides, I am of the opinion that considering the fact that the petitioner-lady is required to travel along with her two minor children upto Surat, and considering the fact that she is maintaining herself with the maintenance amount which she is receiving from the husband and considering the fact that, even otherwise, the respondent is attending the Rajkot Court in connection with the

maintenance proceedings, it is just and proper to transfer the proceedings from Surat to Rajkot so that the petitioner may not have to suffer inconvenience as well as there is also question about her safety problem, as argued by Mr.Gondaliya at the time of hearing of this Miscellaneous Civil Application. Mr.Gondaliya has also relied upon the decision of the Supreme Court in Sumita Singh v. Kumar Sanjay and another, AIR 2002 SC 396, wherein the Honourable Supreme Court has observed that it is the wife's convenience, which must be looked at.

Apart from the aforesaid aspect, even otherwise, when the husband is required to attend the proceedings at Rajkot, it is just and proper that the guardianship application is also transferred to the Rajkot Court.

Under the above circumstances, Civil Miscellaneous (Guardian) Application No.55 of 2003, which is pending before the Court of Extra Assistant Judge, Surat, is ordered to be transferred to the District Court, Rajkot. The District Judge, thereafter, may assign the said matter to an appropriate Judge, who can decide the said application expeditiously. Since the respondent will be required to attend the proceedings at Rajkot, and as argued by Mr.Qureshi, he is having his business at Surat, after such transfer, the Court shall decide the said application expeditiously and put an end to the proceedings at the earliest, in any case, on or before 31st July, 2004.

Mr.Qurshi submitted that the respondent may be permitted to visit his minor children, as, at present, they are with their mother. It is open for the respondent to prefer an application for interim custody and even for a temporary period, if the respondent is desirous to have custody of his children and it is for the Court to decide such application on its own merits. Such application can always be preferred before the concerned Judge in the pending proceedings. Under the circumstances, it is directed that if any such interim custody application is preferred by the husband, the Court shall decide the same in accordance with law.

The main application to be decided by 31st July, 2004.

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allowed and the pending proceedings, i.e., Civil Miscellaneous (Guardian) Application No.55 of 2003, is ordered to be transferred to the Rajkot Court and the District Judge, shall, after getting the papers from the

Surat Court, take steps for assigning the matter to an appropriate Judge.

Rule is made absolute accordingly. Interim relief is vacated, with no order as to costs.

Writ to be sent to the trial court forthwith so that the proceedings can be transferred to the Rajkot Court and thereafter, the Rajkot Court can decide the same expeditiously.

22nd March, 2004 (P.B. Majmudar, J.)

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(apj)